

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

In Re:)	Case No. 96-50415
)	Chapter 7
RANDY ROY HUNT and)	
RENEE DAVIS HUNT,)	
)	
Debtors.)	
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ORDER

This matter comes before the Court upon the Motion of Brad Ragan, Inc., a creditor in this case, to Set Aside Order Authorizing Redemption filed on October 30, 1996. The Debtors responded and a hearing was held in Statesville, North Carolina on December 4, 1996. Based on that hearing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on April 29, 1996. On their Schedule D, the Debtors listed Carolina Tire Company [a business name of Brad Ragan, Inc. ("Ragan")] as a secured creditor holding a lien on a lawn mower and kerosene heater. The Debtors listed Ragan's claim in the amount of \$1,770.76. However, the Debtors valued the collateral at only \$100.00, leaving Ragan undersecured in the amount of \$1,670.76. Ragan filed a proof of claim in the case, claiming a lien against car speakers, a mower and a heater in the amount of \$1,774.21.

The Debtors filed their Statement of Intentions as required by Bankruptcy Code Section 504 on May 24, 1996. That Statement

indicated that the Debtors intended to redeem the property securing Ragan's lien pursuant to Code Section 722. As by the Statement of Intention, the Debtors filed a motion to redeem the personal property securing Ragan's claim, but not until August 21, 1996, much more than forty-five days after the filing of the Statement. Their motion recited the value of the property as \$100.00 and indicated that the Debtors were moving the Court to allow them to redeem the property for that amount. A certificate of service was also filed on August 21, verifying that Ragan had been properly served. Following the filing of the Motion, but before any corresponding Order had been entered, an order discharging the Debtors was entered on September 6, 1996.

Ragan did not respond to the Debtors' motion to redeem. As a result, the Court entered an Order on September 19, 1996 allowing the redemption and setting the redemption amount at \$100.00 as requested by the Debtors. Thereafter, the Debtors failed to make any payment to Ragan, but remained in possession of the property. As of October 30, 1996, forty-one (41) days after the redemption Order had been entered, Ragan had still not been paid by the Debtors. It then filed a Motion to Set Aside Order Authorizing Redemption. The Debtors then tendered their redemption amount to Ragan, but it refused the payment.

At hearing, Ragan argued that the Debtors had lost their right of redemption by failing to complete the redemption within forty-five days of filing their Statement of Intention as required by Code Section 521(2)(B). The Debtors respond that the forty-five

day time period is merely a guideline and that the operative Code section with regard to redemption, Section 722, sets no time limit in which the Debtors must complete the redemption process.

CONCLUSIONS OF LAW

The Debtors filed their Statement of Intention on May 24, 1996. The Motion to Redeem was not filed until August 21, 1996, and the money required to redeem the property was not tendered to Ragan until its Motion to Set Aside Order Authorizing Redemption was filed on October 30, 1996. Further, an Order of Discharge was entered in this case on September 6, 1996, nearly two months before the Debtors tendered the money to Ragan. Clearly, the Debtors did not complete the redemption within forty-five days of the filing of the statement of intention; nor did they complete the redemption prior to receiving their discharge.

A reading of Section 521(2)(B) would seem to indicate that this failure to timely complete the redemption is automatically fatal to the Debtors' redemption efforts. That Section states:

within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph . . .

11 U.S.C. § 521(2)(B). The Debtors did not comply with this Section. Therefore, absent any other relevant authority, the Debtors would appear to have lost their right to redeem.

However, as statutes go, Section 521(2) is a paper tiger. There is sufficient authority to conclude that the forty-five day time period of Section 521(2)(B) is merely a guideline and not a

substantive rule. Despite the clear mandate in Section 521(2)(B) that redemption be made in forth-five days, subsection (2)(C) of that Section states that "nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title." 11 U.S.C. § 521(2)(C). Based upon this statement, it has been held that failure to complete the redemption within the forty-five day time period set out in subparagraph (B) is not an absolute bar to redemption. See Collier on Bankruptcy, vol. 3, pg. 521-51 and In re Eagle, 51 B.R. 959 (B. Ct. N.D. Ohio 1985).

This view is buttressed by Section 722 which provides for a debtor's redemption of property that is properly exempted under Section 522 of the Code or that is abandoned by the trustee under Section 554 of the Code. The property securing Ragan's claim was properly exempted under Section 522 by the Debtors, and redemption was authorized by the Code. Congress, in enacting Section 722, gave no instruction as to when this redemption must be accomplished.

However, some guidance in this regard is provided by the Fourth Circuit Court of Appeals' decision, Riggs Nat. Bank of Washington, D.C. v. Perry, 729 F.2d 982 (1984). Riggs holds to the general rule that the forty-five day performance period in Section 521 is a guideline rather than a strict limitation. It goes further to clarify that a debtor retains the right to redeem until at least the date of discharge, regardless of the forty-five day period found in Section 521. Id. at 986.

However, the analysis in the present case requires us to consider the Debtors' rights after discharge. Here, the Debtors failed to complete the redemption prior to receiving a discharge. Can then a Debtor redeem property over a creditor's objection, past discharge? Riggs, which involved a pre-discharge redemption does not directly answer this question, but provides a pretty good hint.

The automatic stay of Section 362 of the Code provides protection against collection efforts by creditors to debtors in bankruptcy. Under Section 362(c)(2)(C), the stay terminates when the debtors received their discharge - here on September 6, 1996. Based on the stay, Riggs held that the debtor retained the right of redemption up until the time of discharge. However, Riggs states, albeit in dicta, that the right of redemption does not remain with the debtor past the discharge date: "[the debtor] has the option of exercising his right to . . . redeem until the expiration of that stay . . . redemption rights run concurrently with the stay." (emphasis added) Id. at 986, citing In re: Cruseturner, 8 B.R. 581 (Bkrcty. D. Utah 1981). The undersigned believes this reasoning is sound.

In the instant case, although the Debtors' in personam liability to Ragan was discharged, Ragan's lien passed through the bankruptcy unaffected. As a result, on the date the Debtors finally tendered the \$100.00 to Ragan in an attempt to redeem the collateral post-discharge, there was no stay to prevent recovery of the collateral and no mandatory right to redeem. As such it was

completely within Ragan's discretion to refuse the money and instead, exercise its lien rights.

THEREFORE, THE FOLLOWING IS ORDERED:

Ragan's Motion to Set Aside Order Authorizing Redemption filed on October 30, 1996 is hereby GRANTED. The Debtors' Motion to find Ragan in contempt and request for attorney's fees are DENIED.

This the 17th day of December, 1996.


United States Bankruptcy Judge